

BUREAU OF AUTOMOTIVE REPAIR

SPECIFIC LANGUAGE OF PROPOSED REGULATIONS

ADMINISTRATIVE CITATIONS AND FINES FOR UNLICENSED ACTIVITY

Legend: Added text is indicated by underlining.

(1) Add new Article 11.2 to read as follows:

Article 11.2 Administrative Citations and Fines for Unlicensed Activity.

(2) Add Section 3394.40 to Article 11.2, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§3394.40. Authority to Issue Citations and Fines for Unlicensed Practice.

The bureau chief or his/her designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by any unlicensed person who is acting in the capacity of a licensee or registrant.

Note: Authority cited: Section 9882, Business and Professions. Reference: Sections 125.9, 148, 149, and 302 (d) Business and Professions Code.

(3) Add Section 3394.41 of Article 11.2, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3394.41. Citation Format.

A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of each violation, including a reference to the statute(s) and/or regulation(s) alleged to have been violated. The citation shall inform the cited person of the right to contest the citation. The citation shall be served upon the cited person personally or by certified mail pursuant to Section 11505 (c) of the Government Code.

Note: Authority cited: Sections 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149, and 302 (d) Business and Professions Code; 11505 (c), Government Code.

- (4) Add Section 3394.42 of Article 11.2, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3394.42. Citations for Unlicensed Practice.

The bureau chief or his/her designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, as defined in Section 302 (d) of Business and Professions Code, who are performing or who have performed services for which a license or registration is required under the statutes and regulations enforced by the Bureau of Automotive Repair. Each citation shall contain an order of abatement. Where appropriate, the bureau chief or his/her designee shall levy a fine against any unlicensed person who is acting in the capacity of a licensee or registrant. Sanctions authorized under Article 11.2 Administrative Citations and Fines for Unlicensed Activity shall be separate from and in addition to any other civil or criminal actions.

Note: Authority cited: Sections 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149, and 302 (d), Business and Professions Code.

- (5) Add Section 3394.43 of Article 11.2, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3394.43. Fine Amounts for Unlicensed Practice.

(a) The bureau may use the authority pursuant to Business and Professions Code section 148, to issue a citation to a person with an expired license or registration. The bureau shall first issue an order of abatement without a fine that shall contain, but is not limited to the following:

(1) Information that the licensee shall immediately cease all work and/or any work in progress that requires a valid license or registration.

(2) Information that license renewal fee and any delinquency or other fees must be fully paid within 30 calendar days, after which time the bureau may assess fines pursuant to Business and Professions Code section 148.

(3) Notice that continuing to operate without a valid license or registration may result in citation, fine, and/or other disciplinary action.

(b) The bureau may assess an administrative fine to an unlicensed person acting in the capacity of a licensee or registrant that has not applied for and obtained a valid license.

(c) The bureau may assess administrative fines of up to five thousand dollars (\$5,000) for each violation in addition to any criminal penalties. The bureau shall base its assessment and amount of the fine on the following circumstances:

(1) The nature, gravity, severity, and seriousness of the violation.

(2) The persistence of the violation.

(3) The good faith or willfulness of the violator to cooperate with the bureau.

(4) The history of previous violations by that violator, including the commission of numerous and repeated violations.

(5) The failure to perform work for which money was received.

(6) The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.

- (7) The failure to make restitution to consumers affected by the violation.
- (8) The extent to which the violator has mitigated or attempted to mitigate any damage or injury caused by the violation.
- (9) The degree of incompetence or negligence in the performance of duties and responsibilities.
- (10) The purposes and goals of this chapter and other matters as may be appropriate.

Note: Authority cited: Sections 9882, Business and Professions Code. Reference: Sections 125, 125.9, 148, 149, and 302 (d) Business and Professions Code.

- (6) Add Section 3394.44 of Article 11.2, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§3394.44. Compliance with Citation/Order of Abatement.

- (a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the cited person may request an extension of time in which to complete the correction from the bureau chief. Such a request shall be in writing and made within the time set forth for abatement.
- (b) If a citation is not contested, or if the citation is contested and the cited person does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement.
- (c) Failure to timely comply with an order of abatement or pay an assessed fine may result in disciplinary action being taken by the bureau or other appropriate judicial action being taken against the cited person.
- (d) If a fine is not paid after a citation has become final, the fine shall be added to the cited person's license or registration renewal fee. A license or registration shall not be renewed without payment of the renewal fee and fine.
- (e) Nothing in this section shall be construed as permission for any person to operate or continue to operate without a valid license or registration.

Note: Authority cited: Sections 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149, and 302 (d) Business and Professions Code.

- (7) Add Section 3394.45 of Article 11.2, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§3394.45. Contested Citations and Request for a Hearing or Informal Citation Conference.

- (a) In addition to requesting an administrative hearing as provided for in subdivision (b)(4) of Section 125.9 of Business and Professions Code, the cited person may request an informal

conference to review the acts charged in the citation. A request for an informal conference shall be made in writing, within ten (10) days after service of the citation, to the bureau chief or his/her designee.

(b) The bureau chief or his/her designee shall hold, within sixty (60) days from the receipt of the request, an informal conference with the cited person. At the conclusion of the informal conference, the bureau chief or his/her designee may affirm, modify or dismiss the citation, including any fine levied, order of abatement or order of correction issued. The bureau chief or his/her designee shall state in writing the reasons for his or her action and transmit within fifteen (15) days a copy of his or her findings and decision to the cited person. Unless an administrative hearing as provided for in subdivision (b)(4) of Section 125.9 of Business and Professions Code was requested in a timely manner, an informal conference decision which affirms the citation shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) If the citation, including any fine levied or order of abatement or correction, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If the cited person desires a hearing to contest the new citation, he or she shall make a request in writing, within ten (10) days of receipt of the informal conference decision, to the bureau chief or his/her designee. The hearing shall be conducted as provided for in subdivision (b)(4) of Section 125.9 of Business and Professions Code. A cited person may not request an informal conference for a citation which has been modified following an informal conference.

Note: Authority cited: Sections 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149, and 302 (d) Business and Professions Code.

(8) Add Section 3394.46 of Article 11.2, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3394.46. Disconnection of Telephone Service.

Nothing in this section shall preclude the bureau from using the provisions of Section 149 of Business and Professions Code in addition to any citation issued to any person.

Note: Authority cited: Sections 9882, Business and Professions Code. Reference: Sections 125.9, 148, 149, and 302 (d) Business and Professions Code.